

# **Judges of the Supreme Court of India: 1950-89**

## **George H. Gadbois pdf download**

<https://ebookmass.com/product/judges-of-the-supreme-court-of-india-1950-89-george-h-gadbois/>

JUDGES  
OF THE  
SUPREME COURT  
OF INDIA  
1950-1989

**Explore and download more ebooks at [ebookmass.com](https://ebookmass.com)**

**We believe these products will be a great fit for you. Click the link to download now, or visit [ebookmass.com](https://ebookmass.com) to discover even more!**

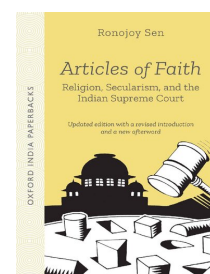
**Appointment of Judges to the Supreme Court of India: Transparency, Accountability, and Independence Arghya Sengupta And Ritwika Sharma**

<https://ebookmass.com/product/appointment-of-judges-to-the-supreme-court-of-india-transparency-accountability-and-independence-arghya-sengupta-and-ritwika-sharma/>

Appointment of Judges to the Supreme Court of India

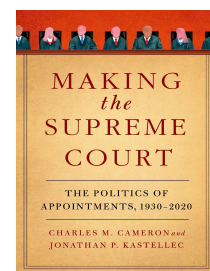
**Articles of Faith: Religion, Secularism, and the Indian Supreme Court Ronojoy Sen**

<https://ebookmass.com/product/articles-of-faith-religion-secularism-and-the-indian-supreme-court-ronojoy-sen/>



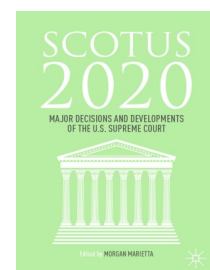
**Making the Supreme Court: The Politics of Appointments, 1930-2020 Charles M. Cameron & Jonathan P. Kastellec**

<https://ebookmass.com/product/making-the-supreme-court-the-politics-of-appointments-1930-2020-charles-m-cameron-jonathan-p-kastellec/>



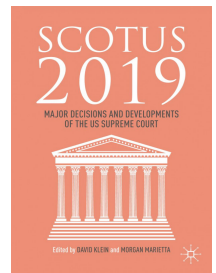
**SCOTUS 2020: Major Decisions and Developments of the U.S. Supreme Court 1st ed. Edition Morgan Marietta**

<https://ebookmass.com/product/scotus-2020-major-decisions-and-developments-of-the-u-s-supreme-court-1st-ed-edition-morgan-marietta/>



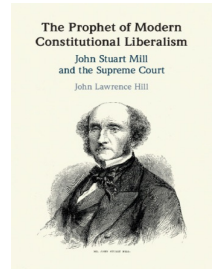
## **SCOTUS 2019: Major Decisions and Developments of the US Supreme Court 1st ed. 2020 Edition David Klein**

<https://ebookmass.com/product/scotus-2019-major-decisions-and-developments-of-the-us-supreme-court-1st-ed-2020-edition-david-klein/>



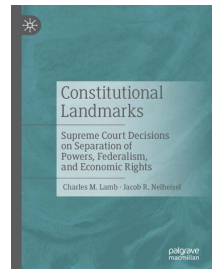
## **The Prophet Of Modern Constitutional Liberalism: John Stuart Mill And The Supreme Court 1st Edition Edition John Lawrence Hill**

<https://ebookmass.com/product/the-prophet-of-modern-constitutional-liberalism-john-stuart-mill-and-the-supreme-court-1st-edition-edition-john-lawrence-hill/>



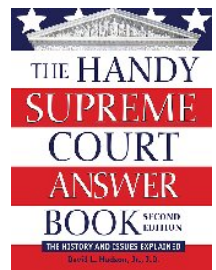
## **Constitutional Landmarks: Supreme Court Decisions on Separation of Powers, Federalism, and Economic Rights Charles M. Lamb**

<https://ebookmass.com/product/constitutional-landmarks-supreme-court-decisions-on-separation-of-powers-federalism-and-economic-rights-charles-m-lamb/>



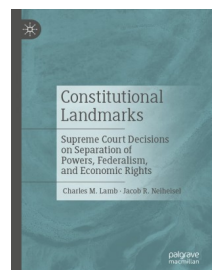
## **The Handy Supreme Court Answer Book: The History and Issues Explained David L. Hudson**

<https://ebookmass.com/product/the-handy-supreme-court-answer-book-the-history-and-issues-explained-david-l-hudson/>



## **Constitutional Landmarks: Supreme Court Decisions on Separation of Powers, Federalism, and Economic Rights 1st ed. Edition Charles M. Lamb**

<https://ebookmass.com/product/constitutional-landmarks-supreme-court-decisions-on-separation-of-powers-federalism-and-economic-rights-1st-ed-edition-charles-m-lamb/>





JUDGES  
OF THE  
SUPREME COURT  
OF INDIA

1950–1989

*Law in India* is a series aimed at scholars, students, and law professionals, whose engagement with the law, especially in South Asia, reaches beyond standard black letter law towards an understanding of how law and legal institutions have an impact upon, and in turn are affected by, society as a whole.

*Series advisors:*

UPENDRA BAXI, RAJEEV DHAVAN, MARC GALANTER

*Founding advisor:*

LATE S.P. SATHE

## OTHER BOOKS IN THE SERIES

RONOJOY SEN

### **Articles of Faith**

Religion, Secularism, and the Indian Supreme Court

SUDHIR KRISHNASWAMY

### **Democracy and Constitutionalism in India**

A Study of the Basic Structure Doctrine

(Oxford India Paperbacks)

RINA VERMA WILLIAMS

### **Postcolonial Politics and Personal Laws**

Colonial Legal Legacies and the Indian State

FLAVIA AGNES

### **Law and Gender Inequality**

The Politics of Women's Rights in India

(Oxford India Paperbacks)

ROBERT LINGAT

### **The Classical Law of India**

(translated and edited by J.D.M. Derrett)

(Oxford India Paperbacks)

ARVIND SHARMA

### **Hinduism and Hindu Rights**

A Conceptual Approach

B. SIVRAMAYYA

### **Matrimonial Property Rights**

(Oxford India Paperbacks)



JUDGES  
OF THE  
SUPREME COURT  
OF INDIA

1950–1989

GEORGE H. GADBOIS, JR

OXFORD  
UNIVERSITY PRESS

OXFORD  
UNIVERSITY PRESS

YMCA Library Building, Jai Singh Road, New Delhi 110 001

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi Kuala Lumpur  
Madrid Melbourne Mexico City Nairobi New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece Guatemala  
Hungary Italy Japan Poland Portugal Singapore South Korea Switzerland  
Thailand Turkey Ukraine Vietnam

Oxford is a registered trademark of Oxford University Press  
in the UK and in certain other countries

Published in India  
by Oxford University Press, New Delhi

© Oxford University Press 2011

The moral rights of the author have been asserted  
Database right Oxford University Press (maker)

First published 2011

All rights reserved. No part of this publication may be reproduced,  
or transmitted in any form or by any means, electronic or mechanical,  
including photocopying, recording or by any information storage and  
retrieval system, without permission in writing from Oxford University Press.  
Enquiries concerning reproduction outside the scope of the above should be  
sent to the Rights Department, Oxford University Press, at the address above

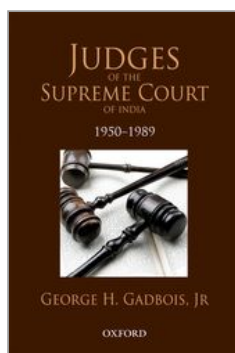
You must not circulate this book in any other binding or cover  
and you must impose this same condition on any acquirer

ISBN-13: 978-019-807061-0  
ISBN-10: 019-807061-6

Typeset in Goudy Old Style 11/14  
by Sai Graphic Design, New Delhi 110 055  
Printed in India at Artxel, New Delhi 110 020

Published by Oxford University Press  
YMCA Library Building, Jai Singh Road, New Delhi 110 001





## Judges of the Supreme Court of India: 1950 - 1989

George H. Gadbois, Jr

Print publication date: 2011

Print ISBN-13: 9780198070610

Published to Oxford Scholarship Online: September 2012

DOI: 10.1093/acprof:oso/9780198070610.001.0001

## Title Pages

**(p.ii)** *Law in India* is a series aimed at scholars, students, and law professionals, whose engagement with the law, especially in South Asia, reaches beyond standard black letter law towards an understanding of how law and legal institutions have an impact upon, and in turn are affected by, society as a whole.

*Series advisors:*

UPENDRA BAXI, RAJEEV DHAVAN, MARC GALANTER

*Founding advisor:*

LATE S.P. SATHE

### OTHER BOOKS IN THE SERIES

RONOJOY SEN

#### **Articles of Faith**

Religion, Secularism, and the Indian Supreme Court

SUDHIR KRISHNASWAMY

#### **Democracy and Constitutionalism in India**

A Study of the Basic Structure Doctrine  
(Oxford India Paperbacks)

RINA VERMA WILLIAMS

#### **Postcolonial Politics and Personal Laws**

Colonial Legal Legacies and the Indian State

FLAVIA AGNES

#### **Law and Gender Inequality**

The Politics of Women's Rights in India  
(Oxford India Paperbacks)

ROBERT LINGAT

**The Classical Law of India**

(translated and edited by J.D.M. Derrett)  
(Oxford India Paperbacks)

ARVIND SHARMA

**Hinduism and Hindu Rights**

A Conceptual Approach

B. SIVRAMAYYA

**Matrimonial Property Rights**

(Oxford India Paperbacks)



Access brought to you by:

*To My Son*  
*Keith Allen Gadbois*  
*1960–1983*



# Acknowledgements

This book could not have been written without the assistance of the judges. I am profoundly appreciative of their willingness to make time available to meet and talk with me. Every interview request was granted. They treated me with unlimited kindness and hospitality. They made this the most enjoyable research project I have ever undertaken.

Generous financial support from the American Institute of Indian Studies made this project possible. I am deeply indebted to it and to the New Delhi support staff. Thanks are due also to the University of Kentucky Research Foundation.

On three occasions my host was the Indian Law Institute, and on another the Institute of Constitutional and Parliamentary Studies. The staff of these institutes was wonderfully hospitable, both professionally and personally.

My indebtedness to my wife Judy, for everything, can never be adequately expressed.



**Visit <https://ebookmass.com> today to explore**

a vast collection of ebooks across various genres, available in popular formats like PDF, EPUB, and MOBI, fully compatible with all devices. Enjoy a seamless reading experience and effortlessly download high-quality materials in just a few simple steps. Plus, don't miss out on exciting offers that let you access a wealth of knowledge at the best prices!

# I

## The Kania Court (1950–1)

What would become the Kania Court began to take shape on 20 June 1946, the date of both Sir Srinivasa Varadachariah's retirement and Sir H.J. Kania becoming a Federal Court judge. Kania was fifty-five and, with fifteen years as a Bombay High Court judge, was second in seniority. A year later there were two personnel changes in quick succession. On 9 June, Sir S. Fazl Ali replaced Sir Muhammad Zafrullah Khan who, the day before had opted for Pakistan and resigned. Less than a week later and just two days before national Independence, Chief Justice Sir William Patrick Spens resigned, leaving only Kania and Fazl Ali on the Court. Kania became the first Indian CJI on 14 August 1947.

The Government of India Act 1935, had provided for a chief justice and as many as six associate judges, but the strength of the Federal Court from 1937 to 1947 never exceeded three, including the CJI. Having decided only 135 decisions and rendered only four advisory opinions during its entire existence, three were sufficient.<sup>1</sup> The transition from the Federal Court to the SCI was seamless—Kania on 26 January became the first CJI under the 1950 Constitution and the five other Federal Court judges became SCI judges. The authorized strength of the Court at this time was eight, including the CJI. After the appointments of N. Chandrasekhara Aiyar in 1950 and Vivian Bose in 1951, the Court reached its full strength.

<sup>1</sup> George H. Gadbois, Jr, 'The Federal Court of India: 1937–1950', *Journal of the Indian Law Institute*, 6 (April–September, 1964), pp. 253–315. The 135 figure is through January 1950.



There might not have been a Kania Court. M.C. Setalvad wrote that in early 1946 he was asked by the law secretary if he would accept a Federal Court judgeship. 'He also told me that Spens would retire in 3 or 4 years, and I would succeed him as Chief Justice. I told him that I was already 61, and would myself retire in four years and was not therefore interested.'<sup>2</sup> When Kania became CJI first in 1947 and again in 1950, there was no convention in place that the most senior judge would become the CJI. There had been an incident in 1943 that touched upon this matter. As Sir Maurice Gwyer, the Federal Court's first chief justice was on the threshold of retirement, the viceroy announced that his replacement was Spens. Gwyer objected because his views on his replacement were not ascertained. He felt strongly that Varadachariar, the most senior associate judge, should have been his replacement.<sup>3</sup>

Later, just three days before Kania was to become CJI under the 1950 Constitution, Nehru expressed irritation about comments Kania had made on a file dealing with making permanent several Madras High Court additional judges.<sup>4</sup> Kania made what Nehru considered 'unjudicial [sic] and indeed improper' observations about Bashir Ahmed, a Muslim, and wrote to Home Minister Sardar Vallabhbhai Patel expressing doubts about whether Kania should become CJI. Patel went ahead with Ahmed's appointment, but not before telling Kania that the failure to confirm Ahmed's appointment might be regarded as communal.<sup>5</sup>

<sup>2</sup> Motilal C. Setalvad, *My Life: Law and Other Things* (Bombay: N.M. Tripathi Pvt. Ltd., 1971), p. 103.

<sup>3</sup> Kuldip Nayar (ed.) *Supersession of Judges* (New Delhi: India Book Company, 1973). K.S. Hegde, *Crisis in Indian Judiciary* (Bombay: Sindhu Publications Pvt. Ltd., 1973), pp. 34–5. Nayar cited 'some lawyers'. Hegde cited an article by B. Shiva Rao in *The Hindu* dated 21 July 1973. Granville Austin repeats this account in *Working a Democratic Constitution: A History of the Indian Experience* (New Delhi: Oxford University Press, 1999), p. 135. Although supporting evidence is lacking, it is quite conceivable that Gwyer was no less upset that he was being replaced by an Englishman.

<sup>4</sup> An additional judge is one appointed for a period not exceeding two years if there is an increase in the business of a high court. The practice became that most permanent high court judges began as additional judges.

<sup>5</sup> Austin, *Working a Democratic Constitution*, pp. 125–6. Austin's source for Nehru's letter to Patel, and Patel's reply, both dated 23 January 1950, is Durga Das (ed.), *Sardar Patel's Correspondence, 1945–1950*, 10 vols (Ahmedabad: Navajivan Publishing House, 1973), vol. 10, p. 378. Austin added that 'Patel also wrote that some indiscretions by a chief justice have to be tolerated, "but, on the whole, I think I have been able to manage him." Kania's petty-mindedness "is a trait not uncommon with some heads of the judiciary who feel that they have the sole monopoly of upholding its independence,"'

Returning to Kania's Federal Court appointment, Bombay had not been represented since Sir Mukund Ramrao Jayakar was appointed to the Judicial Committee of the Privy Council in 1939. Setalvad and Kania had been close friends for decades, and he is widely believed to have been instrumental in Kania's appointment.<sup>6</sup>

Fazl Ali's appointment was not unexpected. He was the most senior Muslim judge in the country, aged sixty, had spent nineteen years on the Patna High Court, and in 1943 became the first Indian to become its chief justice. Moreover, according to his son, the Nehru and Fazl Ali families were well acquainted.<sup>7</sup> Kania's role in the selection of Fazl Ali could not be ascertained.

The first to join the Federal Court during Kania's stewardship was M.P. Sastri of the Madras High Court. Aged fifty-eight when he was sworn in on 6 December 1947, he was third in seniority at Madras. Both the then chief justice and the next most senior were Englishmen. His appointment meant that Madras regained representation after Varadachariar's retirement.

The warrants of the appointments of M.C. Mahajan and B.K. Mukherjea were issued on the same day. According to Mahajan's account, Kania in July 1948 had inquired about his interest in a Federal Court judgeship: '... I want at least two more judges for the Federal Court and I am considering your name. ... I should like to know if you like [sic] to be considered ...'<sup>8</sup> Mahajan replied in the affirmative, and Kania wrote in September, saying that 'he had recommended my name and there was nothing further to write till he knew that the names he had submitted had gone through.'<sup>9</sup> Soon Kania wrote again, saying 'Everything has passed through as intended.'<sup>10</sup> He accepted Kania's invitation, but his chief justice, Dewan Ram Lal, wanted that appointment himself and had Nehru's support.<sup>11</sup> The Chief Justice of

---

Austin, p. 126, fn. 9, citing Durga Das, vol. 10, p. 379. A more complete account of this incident is found in A.G. Noorani, 'The Prime Minister and the Judiciary', in James Manor (ed.), *Nehru to the Nineties: The Changing Office of Prime Minister of India* (Vancouver: University of British Columbia Press, 1994), pp. 94–114, 99–100.

<sup>6</sup> Setalvad, *My Life*, pp. 68, 180.

<sup>7</sup> Interview with S.M. Fazal Ali on 24 April 1983 in New Delhi.

<sup>8</sup> Mehr Chand Mahajan, *Looking Back: The Autobiography of Mehr Chand Mahajan, Former Chief Justice of India* (Bombay: Asia Publishing House, 1963), p. 191.

<sup>9</sup> *Ibid.*, pp. 191–2.

<sup>10</sup> *Ibid.*, p. 192. Mahajan recalled that he took the oath of office on 1 October but the official records indicate that the correct date was the 4th.

<sup>11</sup> Mahajan, *Looking Back*, pp. 191–2.

India and the Home Minister, Sardar Patel, were of a different opinion and eventually I was appointed.’<sup>12</sup> Mahajan was fifty-eight and the first Federal Court judge from Punjab when he was sworn in on 4 October 1948.

B.K. Mukherjea also received his invitation to become a Federal Court judge from Kania.<sup>13</sup> The first Bengali to serve on the Court, he was fifty-seven when he was sworn in on 14 October. He had served on the Calcutta High Court for twelve years, and was second in seniority when the chief justice was Sir Arthur Trevor Harries. Although Mukherjea had much more high court service than Mahajan, Mukherjea’s arrival in Delhi was delayed, meaning that Mahajan became senior to Mukherjea. This seemed of little consequence at this time, but following Kania’s death, Sastri, the most senior associate judge, became CJI. If the convention of the seniormost becoming CJI can be dated from then, because he was sworn in ahead of Mukherjea, Mahajan became CJI following Sastri’s retirement in 1954. He would not have become CJI otherwise.

Nearly sixteen months would pass before S.R. Das, at age fifty-five, joined the Federal Court on 20 January 1950, one week before the SCI succeeded the Federal Court. Although a second consecutive Bengali, and having been a member of the Calcutta bench for seven years, he came to the Federal Court from the East Punjab High Court for, in 1949 Patel, believing there was a need for a chief justice from the outside, persuaded Das to accept transfer to Simla as that court’s chief justice.

The first to be sworn in after the commencement of the Constitution was N. Chandrasekhara Aiyar, who had retired from the Madras High Court in 1948. When he joined the SCI on 23 September 1950, he was nearly sixty-three. Another thirty years would pass and sixty more SCI judges would be appointed before anyone older would reach the Court.<sup>14</sup> Because of his advanced age, his appointment was the most unusual of the Kania years.

The final member of the abbreviated Kania regime was Vivian Bose, sworn in on 5 March 1951. A Christian, Bose was nearly sixty when he arrived in Delhi. He had served fifteen years on the Nagpur High Court,

<sup>12</sup> *Ibid.*, p. 192.

<sup>13</sup> Interview with Mukherjea’s son, Amiya Kumar Mookerji, a retired Calcutta High Court judge, on 29 June 1983 in Calcutta.

<sup>14</sup> Baharul Islam, appointed in 1980, was a few weeks older than Chandrasekhara Aiyar.

the last two as its chief justice. Bose recalled that the invitation came directly from Kania.<sup>15</sup>

At least one to whom Kania extended an invitation declined. M.C. Chagla, Kania's former junior colleague on the Bombay High Court, wrote that 'Kania offered me a judgeship of the Federal Court. ... I declined the offer because I thought I was doing more useful work as Chief Justice of Bombay. ...'<sup>16</sup> Chagla wrote that this invitation was extended in 1950. Born in 1900, he was no older than fifty at this time. Had he accepted the offer, and if being the seniormost associate judge would determine who would become CJI, he would have been the next in line for the chief justiceship no later than S.R. Das's retirement in 1959, three years earlier had he reached Delhi ahead of Das, and would have had a very long tenure as CJI. Chagla wrote that when Kania died, Setalvad urged Nehru to appoint him as CJI, and Nehru 'seemed agreeable'. But when the sitting judges '... threatened to resign if the seniority rule was not followed ... the Government yielded to the threat.'<sup>17</sup>

The above points to the conclusion that Kania was a very active participant in the process of identifying the high court judges he wanted appointed. How many of the six who joined the Court during his watch were initiated by him, cannot be determined. The best guess is that Kania was a party to each appointment, perhaps the decisive one, but Patel's role should not be overlooked. Kania apparently was the first to approach a prospective nominee and after the decision was made he was the conveyer of the formal invitation. Because there were only about one hundred high court judges during these years, Kania was most likely familiar with most, or all, of the six. The inherited tradition was that the home minister was responsible for appointments to the higher judiciary, and the limited evidence available points to Patel, a powerful figure during these transitional years, taking this responsibility seriously. Following Patel's death at the end of 1950, C. Rajagopalachari became home minister, and was holding that post when

<sup>15</sup> Interview with Bose in Bangalore on 21 June 1983.

<sup>16</sup> M.C. Chagla, *Roses in December: An Autobiography with Epilogue*. Eighth enlarged edition (Bombay: Bharatiya Vidya Bhavan, 1978), p. 171. Apparently, an SCI judgeship was not offered to any other Bombay High Court judge at this time. With Kania as CJI, Setalvad as the first attorney general, and C.K. Daphtary the nation's first solicitor general, all from Bombay, the SCI, in its formative years, was strongly influenced by the traditions and culture of the Bombay High Court and bar.

<sup>17</sup> Chagla, *Roses in December*, p. 171.

Vivian Bose was appointed. The only evidence of Nehru's involvement in these appointments was his reservations about the Mahajan appointment and about Kania becoming CJI, but it is likely his involvement went beyond that. It is perplexing, given the extent to which the Constituent Assembly wrestled over devising a method of selecting judges, that the names of Sastri, Mahajan, and Mukherjea, all appointed during their deliberations, were never mentioned.

At the time of their appointments, the average age of the first eight judges was 58.6.<sup>18</sup> All had been senior high court judges, their tenures averaging 10.7 years. Three had been chief justices, and three others were the most senior associate judges. Five of them came from the three presidency high courts of Bombay, Calcutta, and Madras. The remaining three represented Patna, Punjab, and Nagpur. There were nine high courts during these years. That the United Provinces, the most populous in the country, was not represented with a judge from the Allahabad High Court is surprising. The high courts of Orissa and Assam had been created only in 1948.

In terms of geography, the east was represented by Das and Mukherjea, the west by Kania and Bose, the south by Sastri and Chandrasekhara Aiyar, and the north by Fazl Ali and Mahajan. Men from the four corners of the country were brought together and, for some, this was their first exposure to judges from other regions.

All except Mukherjea were the offspring of privileged or at least economically comfortable families. The fathers of four (Kania, Sastri, Mukherjea, and Chandrasekhara Aiyar) were Sanskrit scholars, and the fathers of four (Fazl Ali, Mahajan, Mukherjea, and Chandrasekhara Aiyar) had been lawyers. There were lawyers in the extended family backgrounds of Kania, Das, and Bose. Only Sastri was the first lawyer in his family. Three (Fazl Ali, Das, Bose) were London-educated barristers, the others having received all their education in India.

Of the six Hindus, three (Sastri, Mukherjea, and Chandrasekhara Aiyar) were brahmins. Although the caste pedigrees of Hindu high court judges at this time are not available, it is very likely that half were brahmins. Fazl Ali, without minimizing his sterling credentials was the likely choice because he was a Muslim. Bose was a Christian, but unlikely to have been selected mainly for that reason. So, among a group as small as eight, the three largest

<sup>18</sup> For the six who were Federal Court judges, their age at the time of that appointment has been used.

religions were represented. Particularly in terms of religion and region, this first bench was a truly diverse and assimilative institution.

Although Kania's death in November 1951 cut short his tenure by four years, in the judges who comprised the first bench, he left a significant legacy. Four of them would follow him as CJIs and serve throughout the first decade. When he died, the strength of the Court fell to six, for the vacancy that arose when Fazl Ali retired six weeks earlier had not yet been filled. Kania had, however, persuaded Fazl Ali to return to the bench a month later under the terms of Article 128.<sup>19</sup>

### 1. Harilal Jekisondas Kania (1950–1)

Sir H.J. Kania was born into a middle-class family at Surat, Surat district, Gujarat on 3 November 1890. He was the son of Jekisondas Kania, a professor of Sanskrit and later principal of Samaldas College at Bhavanagar in what was then Saurashtra state. Kania received his BA degree from that little known college in 1910. In 1912, he received the LLB from Government Law College, Bombay, followed by an LLM. After further studies, he began his practice at the Bombay High Court in 1915. He married the daughter of Sir Chunilal V. Mehta, a prominent lawyer, businessman, and politician who served for some time as a member of the executive council of the Governor of Bombay. Kania's grandfather had been a revenue officer in Gujarat. An elder brother, Hiralal J. Kania, whose son M.H. Kania<sup>20</sup> would become an SCI judge in 1987, was also a lawyer and together they represented the first generation of this family to enter the law profession.

During his early years at the bar, he was the acting editor of the *Indian Law Reports*. In 1930, he served four months on the Bombay High Court as an acting judge. In June 1931, he was appointed an additional judge and continued as such until March 1933.<sup>21</sup> He then returned to the bar until

<sup>19</sup> Article 128 of the Constitution provides that the CJI, with the permission of the retired SCI judge and with the previous consent of the President of India, may ask the retiree to return to the Court for a designated period. The usual reason is that the SCI is short-handed.

<sup>20</sup> Assistance with this essay was provided by M.H. Kania, interviewed on 23 April 1988 in New Delhi.

<sup>21</sup> Seniority on a high court is determined by the date continuous service commences, so his service as an acting and additional judge was not considered.

June 1933 when, at age forty-two, he accepted appointment as a permanent judge.<sup>22</sup> He remained on the Bombay bench for the next thirteen years. In 1939, he accepted the additional task of serving as chairman of the Bombay Disturbances Inquiry Commission, and in 1943 he was knighted.

As Bombay's Chief Justice Sir John Beaumont was approaching retirement age in 1943, Kania was the most senior associate judge and as such in line to become the first Indian to hold that position. But Beaumont and Kania had had a falling out in 1942 and he refused to recommend Kania.<sup>23</sup> Sir Leonard Stone superseded him and became chief justice. From May to September 1944, and from June–October 1945, Kania did serve as acting chief justice.

On 20 June 1946, the same day that Sir Srinivasa Varadachariar retired, Kania, then fifty-five, became a judge of the Federal Court. This appointment was strongly supported by Stone who felt that an injustice had been done when Kania was denied the Bombay chief justiceship.<sup>24</sup> On the eve of national Independence, Spens resigned and Kania, on 14 August 1947, became the first Indian chief justice of the Federal Court. In the same year, he also served as the Indian representative on an arbitral tribunal created to settle some differences between India and Pakistan.

When the Federal Court was replaced by the SCI on 26 January 1950, Kania became the SCI's first chief justice. Aged fifty-nine at this time, he was expected to lead the Court for nearly six years, but he died of a heart attack on 6 November 1951, three days after turning sixty-one.

<sup>22</sup> An acting judge was appointed if a sitting judge was by reason of absence or any other reason unable to perform his duties.

<sup>23</sup> Motilal C. Setalvad, *My Life*, p. 56. Setalvad writes that Beaumont, the Bombay chief justice since 1930, had an anti-Indian bias and wanted his successor to be an Englishman. Governor Sir Roger Lumley wanted an Indian to be appointed and persuaded Beaumont to offer the post to Setalvad, who was then the Bombay Attorney General. Setalvad declined the offer because he felt that Kania should become chief justice, pp. 68–9. For more, see Chagla, *Roses in December*, pp. 132–3, and K.M. Munshi, *Bombay High Court: Half a Century of Reminiscences* (Bombay: Bharatiya Vidya Bhavan, 1963), p. 40. Chagla became Bombay's first Indian chief justice in 1947, by which time Kania was serving on the Federal Court.

<sup>24</sup> Setalvad, *My Life*, p. 82, and interview with H.M. Seervai on 3 November 1988, in Bombay.

## 2. Saiyed Fazl Ali (1950–1, 1951–2)

Sir S. Fazl Ali was born on 19 September 1886 at Varanasi, Varanasi district in Uttar Pradesh into a prominent and wealthy Muslim family. He was the son of Saiyed Nazir Ali, a lawyer who practised in Varanasi. Fazl Ali's family must have had law in its genes, for this Fazl Ali represented the seventh consecutive generation of lawyers. The family tradition continued with his son, S.M. Fazal Ali,<sup>25</sup> following his father to the SCI a generation later.

Educated at Muir Central College, Allahabad, he graduated at the top of his class, earning the BA degree in 1907. He went to England to prepare for the ICS examinations. Unsuccessful, he read law at London's Middle Temple, passed the bar final examination in the first class, and was called to the bar in 1912.<sup>26</sup>

Upon his return to India, he began his law practice at the district courts in Chapra, Bihar in 1912. Practising at that level was unusual for a barrister as was the fact that he specialized in criminal cases. Very few who would reach the SCI had prior experience with criminal cases. In 1924, he moved his practice to the Patna High Court, that court having been created in 1916. At age forty-one, in April 1928, Fazl Ali was appointed to that high court. In 1938, he was acting chief justice for a short period, and on 19 January 1943<sup>27</sup> and at age fifty-six, he was the first Indian to become chief justice at Patna. Although due to retire in September 1946, the central government extended his tenure by one year, something that could be done during the colonial period.

Fazl Ali was called upon frequently to resolve difficult and often delicate disputes. He was deputed by the Bihar government to settle industrial disputes at Jamshedpur and in April 1946, near the end of his high court career, he was appointed chairman of the Royal Indian Navy Mutiny Inquiry Commission. In September 1947, because of his reputation for impartiality

<sup>25</sup> Assistance with this essay was provided by his son, interviewed on 23 April 1983 in New Delhi. The latter chose a different spelling of his surname to avoid confusion with his father's.

<sup>26</sup> In London, Fazl Ali became acquainted with his future SCI colleague Vivian Bose, for the latter was also called to the bar from Middle Temple a year later. Jawaharlal Nehru, in London at the same time, was called to the bar from Inner Temple in 1913.

<sup>27</sup> On this same day, B.P. Sinha, later CJI and a former junior of Fazl Ali, was sworn in as an additional judge at Patna. B.P. Sinha discusses Fazl Ali's life and career in *Reminiscences and Reflections of a Chief Justice* (Delhi: B.R. Publishing Corporation, 1985), pp. 36–7 and 188–90.



towards persons of all communities, religious and otherwise, he was appointed a member of the Calcutta Disturbances Inquiry Commission, which had been established to investigate the widespread communal killings in Calcutta.

On 9 June 1947, he was appointed to the Federal Court to fill the seat which had become vacant a day earlier when Sir Muhammed Zafrullah Khan opted for Pakistan. Aged sixty at this time, and with nineteen years of high court experience, more than any other high court judge would ever bring to the SCI, he was among the most senior, if not the seniormost, high court judge in the country. He was the last of the judges appointed to the Federal Court before the departure of the British. Shortly after joining the Federal Court, Fazl Ali, in September 1947, was one of the five members of the Indian delegation to the second session of the United Nations General Assembly, where he was elected chairman of the Fifth Committee of the Assembly for that session.<sup>28</sup>

When the Federal Court was replaced by the SCI, Fazl Ali became a charter member. He was sixty-three by this time and, on 19 September 1951 was the first to reach retirement age. But it was a very brief retirement, for CJI Kania asked him to return under the terms of Article 128 and he was back on the court on 15 October. His judicial career concluded on 30 May 1952. His SCI tenure was only about twenty-eight months, but his combined high court, federal court, and SCI tenures were twenty-four years.

He was knighted in 1941. Later he received an LLD (*honoris causa*) from Aligarh Muslim University and in 1956 he was awarded the Padma Vibhushan, the nation's second highest civilian honour.

Fazl Ali remained very active after leaving the SCI. Indeed, retirement was followed by a highly visible second career as an administrator. He had left the Court just before the beginning of the summer vacation in 1952 because he had been asked by Prime Minister Nehru to become the Governor of Orissa. This provoked a minor controversy confined mainly to legal circles because he was still serving on the SCI when the appointment was announced, and over the propriety of a former judge becoming a state governor.<sup>29</sup> Fazl Ali served as Orissa's governor until early

<sup>28</sup> Because of the communal frenzy that followed Independence and Partition, Setalvad wrote that Fazl Ali '... had to be brought, I was told, to the Delhi airport dressed in Hindu garb, so that he might be safe from attack by the Hindu mob.' Setalvad, *My Life*, p. 114.

<sup>29</sup> Setalvad, *My Life*, pp. 190–1. Not until the early 1990s, when M. Fathima Beevi

**Visit <https://ebookmass.com> today to explore**

a vast collection of ebooks across various genres, available in popular formats like PDF, EPUB, and MOBI, fully compatible with all devices. Enjoy a seamless reading experience and effortlessly download high-quality materials in just a few simple steps. Plus, don't miss out on exciting offers that let you access a wealth of knowledge at the best prices!

# Exploring the Variety of Random Documents with Different Content

1.C. The Project Gutenberg Literary Archive Foundation (“the Foundation” or PGLAF), owns a compilation copyright in the collection of Project Gutenberg™ electronic works. Nearly all the individual works in the collection are in the public domain in the United States. If an individual work is unprotected by copyright law in the United States and you are located in the United States, we do not claim a right to prevent you from copying, distributing, performing, displaying or creating derivative works based on the work as long as all references to Project Gutenberg are removed. Of course, we hope that you will support the Project Gutenberg™ mission of promoting free access to electronic works by freely sharing Project Gutenberg™ works in compliance with the terms of this agreement for keeping the Project Gutenberg™ name associated with the work. You can easily comply with the terms of this agreement by keeping this work in the same format with its attached full Project Gutenberg™ License when you share it without charge with others.

1.D. The copyright laws of the place where you are located also govern what you can do with this work. Copyright laws in most countries are in a constant state of change. If you are outside the United States, check the laws of your country in addition to the terms of this agreement before downloading, copying, displaying, performing, distributing or creating derivative works based on this work or any other Project Gutenberg™ work. The Foundation makes no representations concerning the copyright status of any work in any country other than the United States.

1.E. Unless you have removed all references to Project Gutenberg:

1.E.1. The following sentence, with active links to, or other immediate access to, the full Project Gutenberg™ License must appear prominently whenever any copy of a Project Gutenberg™ work (any work on which the phrase “Project Gutenberg” appears, or with which the phrase “Project Gutenberg” is associated) is accessed, displayed, performed, viewed, copied or distributed:

This eBook is for the use of anyone anywhere in the United States and most other parts of the world at no cost and with almost no restrictions whatsoever. You may copy it, give it away or re-use it under the terms of the Project Gutenberg License included with this eBook or online at [www.gutenberg.org](http://www.gutenberg.org). If you are not located in the United States, you will have to check the laws of the country where you are located before using this eBook.

1.E.2. If an individual Project Gutenberg™ electronic work is derived from texts not protected by U.S. copyright law (does not contain a notice indicating that it is posted with permission of the copyright holder), the work can be copied and distributed to anyone in the United States without paying any fees or charges. If you are redistributing or providing access to a work with the phrase "Project Gutenberg" associated with or appearing on the work, you must comply either with the requirements of paragraphs 1.E.1 through 1.E.7 or obtain permission for the use of the work and the Project Gutenberg™ trademark as set forth in paragraphs 1.E.8 or 1.E.9.

1.E.3. If an individual Project Gutenberg™ electronic work is posted with the permission of the copyright holder, your use and distribution must comply with both paragraphs 1.E.1 through 1.E.7 and any additional terms imposed by the copyright holder. Additional terms will be linked to the Project Gutenberg™ License for all works posted with the permission of the copyright holder found at the beginning of this work.

1.E.4. Do not unlink or detach or remove the full Project Gutenberg™ License terms from this work, or any files containing a part of this work or any other work associated with Project Gutenberg™.

1.E.5. Do not copy, display, perform, distribute or redistribute this electronic work, or any part of this electronic work, without prominently displaying the sentence set forth in paragraph 1.E.1

with active links or immediate access to the full terms of the Project Gutenberg™ License.

1.E.6. You may convert to and distribute this work in any binary, compressed, marked up, nonproprietary or proprietary form, including any word processing or hypertext form. However, if you provide access to or distribute copies of a Project Gutenberg™ work in a format other than “Plain Vanilla ASCII” or other format used in the official version posted on the official Project Gutenberg™ website ([www.gutenberg.org](http://www.gutenberg.org)), you must, at no additional cost, fee or expense to the user, provide a copy, a means of exporting a copy, or a means of obtaining a copy upon request, of the work in its original “Plain Vanilla ASCII” or other form. Any alternate format must include the full Project Gutenberg™ License as specified in paragraph 1.E.1.

1.E.7. Do not charge a fee for access to, viewing, displaying, performing, copying or distributing any Project Gutenberg™ works unless you comply with paragraph 1.E.8 or 1.E.9.

1.E.8. You may charge a reasonable fee for copies of or providing access to or distributing Project Gutenberg™ electronic works provided that:

- You pay a royalty fee of 20% of the gross profits you derive from the use of Project Gutenberg™ works calculated using the method you already use to calculate your applicable taxes. The fee is owed to the owner of the Project Gutenberg™ trademark, but he has agreed to donate royalties under this paragraph to the Project Gutenberg Literary Archive Foundation. Royalty payments must be paid within 60 days following each date on which you prepare (or are legally required to prepare) your periodic tax returns. Royalty payments should be clearly marked as such and sent to the Project Gutenberg Literary Archive Foundation at the address specified in Section 4, “Information

about donations to the Project Gutenberg Literary Archive Foundation.”

- You provide a full refund of any money paid by a user who notifies you in writing (or by e-mail) within 30 days of receipt that s/he does not agree to the terms of the full Project Gutenberg™ License. You must require such a user to return or destroy all copies of the works possessed in a physical medium and discontinue all use of and all access to other copies of Project Gutenberg™ works.
- You provide, in accordance with paragraph 1.F.3, a full refund of any money paid for a work or a replacement copy, if a defect in the electronic work is discovered and reported to you within 90 days of receipt of the work.
- You comply with all other terms of this agreement for free distribution of Project Gutenberg™ works.

1.E.9. If you wish to charge a fee or distribute a Project Gutenberg™ electronic work or group of works on different terms than are set forth in this agreement, you must obtain permission in writing from the Project Gutenberg Literary Archive Foundation, the manager of the Project Gutenberg™ trademark. Contact the Foundation as set forth in Section 3 below.

## 1.F.

1.F.1. Project Gutenberg volunteers and employees expend considerable effort to identify, do copyright research on, transcribe and proofread works not protected by U.S. copyright law in creating the Project Gutenberg™ collection. Despite these efforts, Project Gutenberg™ electronic works, and the medium on which they may be stored, may contain “Defects,” such as, but not limited to, incomplete, inaccurate or corrupt data, transcription errors, a copyright or other intellectual property infringement, a defective or

damaged disk or other medium, a computer virus, or computer codes that damage or cannot be read by your equipment.

1.F.2. LIMITED WARRANTY, DISCLAIMER OF DAMAGES - Except for the "Right of Replacement or Refund" described in paragraph 1.F.3, the Project Gutenberg Literary Archive Foundation, the owner of the Project Gutenberg™ trademark, and any other party distributing a Project Gutenberg™ electronic work under this agreement, disclaim all liability to you for damages, costs and expenses, including legal fees. YOU AGREE THAT YOU HAVE NO REMEDIES FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY OR BREACH OF CONTRACT EXCEPT THOSE PROVIDED IN PARAGRAPH 1.F.3. YOU AGREE THAT THE FOUNDATION, THE TRADEMARK OWNER, AND ANY DISTRIBUTOR UNDER THIS AGREEMENT WILL NOT BE LIABLE TO YOU FOR ACTUAL, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES EVEN IF YOU GIVE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

1.F.3. LIMITED RIGHT OF REPLACEMENT OR REFUND - If you discover a defect in this electronic work within 90 days of receiving it, you can receive a refund of the money (if any) you paid for it by sending a written explanation to the person you received the work from. If you received the work on a physical medium, you must return the medium with your written explanation. The person or entity that provided you with the defective work may elect to provide a replacement copy in lieu of a refund. If you received the work electronically, the person or entity providing it to you may choose to give you a second opportunity to receive the work electronically in lieu of a refund. If the second copy is also defective, you may demand a refund in writing without further opportunities to fix the problem.

1.F.4. Except for the limited right of replacement or refund set forth in paragraph 1.F.3, this work is provided to you 'AS-IS', WITH NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED,



INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

1.F.5. Some states do not allow disclaimers of certain implied warranties or the exclusion or limitation of certain types of damages. If any disclaimer or limitation set forth in this agreement violates the law of the state applicable to this agreement, the agreement shall be interpreted to make the maximum disclaimer or limitation permitted by the applicable state law. The invalidity or unenforceability of any provision of this agreement shall not void the remaining provisions.

1.F.6. INDEMNITY - You agree to indemnify and hold the Foundation, the trademark owner, any agent or employee of the Foundation, anyone providing copies of Project Gutenberg™ electronic works in accordance with this agreement, and any volunteers associated with the production, promotion and distribution of Project Gutenberg™ electronic works, harmless from all liability, costs and expenses, including legal fees, that arise directly or indirectly from any of the following which you do or cause to occur: (a) distribution of this or any Project Gutenberg™ work, (b) alteration, modification, or additions or deletions to any Project Gutenberg™ work, and (c) any Defect you cause.

## **Section 2. Information about the Mission of Project Gutenberg™**

Project Gutenberg™ is synonymous with the free distribution of electronic works in formats readable by the widest variety of computers including obsolete, old, middle-aged and new computers. It exists because of the efforts of hundreds of volunteers and donations from people in all walks of life.

Volunteers and financial support to provide volunteers with the assistance they need are critical to reaching Project Gutenberg™'s goals and ensuring that the Project Gutenberg™ collection will

remain freely available for generations to come. In 2001, the Project Gutenberg Literary Archive Foundation was created to provide a secure and permanent future for Project Gutenberg™ and future generations. To learn more about the Project Gutenberg Literary Archive Foundation and how your efforts and donations can help, see Sections 3 and 4 and the Foundation information page at [www.gutenberg.org](http://www.gutenberg.org).

### **Section 3. Information about the Project Gutenberg Literary Archive Foundation**

The Project Gutenberg Literary Archive Foundation is a non-profit 501(c)(3) educational corporation organized under the laws of the state of Mississippi and granted tax exempt status by the Internal Revenue Service. The Foundation's EIN or federal tax identification number is 64-6221541. Contributions to the Project Gutenberg Literary Archive Foundation are tax deductible to the full extent permitted by U.S. federal laws and your state's laws.

The Foundation's business office is located at 809 North 1500 West, Salt Lake City, UT 84116, (801) 596-1887. Email contact links and up to date contact information can be found at the Foundation's website and official page at [www.gutenberg.org/contact](http://www.gutenberg.org/contact)

### **Section 4. Information about Donations to the Project Gutenberg Literary Archive Foundation**

Project Gutenberg™ depends upon and cannot survive without widespread public support and donations to carry out its mission of increasing the number of public domain and licensed works that can be freely distributed in machine-readable form accessible by the widest array of equipment including outdated equipment. Many

small donations (\$1 to \$5,000) are particularly important to maintaining tax exempt status with the IRS.

The Foundation is committed to complying with the laws regulating charities and charitable donations in all 50 states of the United States. Compliance requirements are not uniform and it takes a considerable effort, much paperwork and many fees to meet and keep up with these requirements. We do not solicit donations in locations where we have not received written confirmation of compliance. To SEND DONATIONS or determine the status of compliance for any particular state visit [www.gutenberg.org/donate](http://www.gutenberg.org/donate).

While we cannot and do not solicit contributions from states where we have not met the solicitation requirements, we know of no prohibition against accepting unsolicited donations from donors in such states who approach us with offers to donate.

International donations are gratefully accepted, but we cannot make any statements concerning tax treatment of donations received from outside the United States. U.S. laws alone swamp our small staff.

Please check the Project Gutenberg web pages for current donation methods and addresses. Donations are accepted in a number of other ways including checks, online payments and credit card donations. To donate, please visit: [www.gutenberg.org/donate](http://www.gutenberg.org/donate).

## **Section 5. General Information About Project Gutenberg™ electronic works**

Professor Michael S. Hart was the originator of the Project Gutenberg™ concept of a library of electronic works that could be freely shared with anyone. For forty years, he produced and distributed Project Gutenberg™ eBooks with only a loose network of volunteer support.

Project Gutenberg™ eBooks are often created from several printed editions, all of which are confirmed as not protected by copyright in the U.S. unless a copyright notice is included. Thus, we do not necessarily keep eBooks in compliance with any particular paper edition.

Most people start at our website which has the main PG search facility: [www.gutenberg.org](http://www.gutenberg.org).

This website includes information about Project Gutenberg™, including how to make donations to the Project Gutenberg Literary Archive Foundation, how to help produce our new eBooks, and how to subscribe to our email newsletter to hear about new eBooks.

Welcome to our website – the perfect destination for book lovers and knowledge seekers. We believe that every book holds a new world, offering opportunities for learning, discovery, and personal growth. That's why we are dedicated to bringing you a diverse collection of books, ranging from classic literature and specialized publications to self-development guides and children's books.

More than just a book-buying platform, we strive to be a bridge connecting you with timeless cultural and intellectual values. With an elegant, user-friendly interface and a smart search system, you can quickly find the books that best suit your interests. Additionally, our special promotions and home delivery services help you save time and fully enjoy the joy of reading.

Join us on a journey of knowledge exploration, passion nurturing, and personal growth every day!

**ebookmasss.com**